



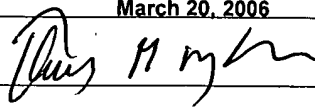

Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

Approved for use through xx/xx/200x. OMB 0651-00xx

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| PRE-APPEAL BRIEF REQUEST FOR REVIEW   |  | Docket Number (Optional)<br><u>ACSES-64851</u>   |                                   |
|---|--|--|-----------------------------------|
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR<br>on <u>March 20, 2006</u><br>Signature <u></u><br>Typed or printed name <u>Thomas H. Majcher</u> |  | Application Number<br><u>10/600817</u><br><u>09/948,335</u>  | Filed<br><u>September 6, 2001</u> |
|   |  | First Named Inventor<br><u>William J. Harrison</u>   |                                   |
|   |  | Art Unit<br><u>3731</u>  | Examiner<br><u>Nguyen Vi X.</u>   |
| Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  |  |  |                                   |
| This request is being filed with a notice of appeal.  |  |  |                                   |
| The review is requested for the reason(s) stated on the attached sheet(s).<br>Note: No more than five (5) pages may be provided.  |  |  |                                   |
| I am the  |  | <u></u><br>Signature |                                   |
| <input type="checkbox"/> applicant/inventor.  |  | <u>Thomas H. Majcher</u><br>Typed or printed name  |                                   |
| <input type="checkbox"/> assignee of record of the entire interest.<br>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br>(Form PTO/SB/96)   |  |  |                                   |
| <input checked="" type="checkbox"/> attorney or agent of record.<br>Registration number <u>31,119</u>   |  | <u>310-824-5555</u><br>Telephone number  |                                   |
| <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br>Registration number if acting under 37 CFR 1.34 _____   |  | <u>March 20, 2006</u><br>Date  |                                   |
| NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.  |  |  |                                   |
| <input type="checkbox"/> *Total of _____ forms are submitted.   |  |  |                                   |

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Thomas H. Majcher, Reg. No. 31,119

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 10/600,817  
Applicant : Benjamin C. Huter et al.  
Filed : June 20, 2003  
Title : HINGED SHORT CAGE FOR AN  
          : EMBOLIC PROTECTION DEVICE  
Art Unit : 3731  
Examiner : Truong, Kevin Thao

Docket No.: : ACSES-64851 (2791P)  
Customer No. : 24201

Los Angeles, California  
March 20, 2006

MAIL STOP APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

INTRODUCTION

The present invention relates generally to expandable baskets or cages used to form an embolic protection device for filtering embolic debris in a body lumen, and more particularly, to a filtering device, including an expandable cage and filter material, which is mounted to a guide wire having one or more discrete hinges formed thereon. These discrete hinges provide increased flexibility to the guide wire to allow the filtering device to be maneuvered through tortuous anatomy and be deployed in body vessels having sharp bends without deforming the cage. Generally, deformed expansion of the expandable cage can cause the unwanted formation of a gap between the filtering device

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and the body vessel wall, through which embolic material may escape capture. The discrete hinges facilitate maneuvering the filtering device through tortuous anatomy by allowing the expandable cage to move independent of the guide wire while still maintaining its connection to the guide wire. Furthermore, the discrete hinges reduce the tendency of the expandable cage to partially collapse when deployed in a body vessel having a sharp bend due to lateral loading from the vessel walls. Moreover, the discrete hinges ensure that the expandable cage will maintain proper wall apposition, thereby providing effective blood filtering and embolic debris capture.

### NOTICE OF APPEAL

A Notice of Appeal from the final Office Action of September 22, 2005 is being filed concurrently herewith along with the appropriate fee.

### ISSUES ON APPEAL

At issue is whether claims 1, 2, 5-10, 19-21 and 26-39 are unpatentable under 35 U. S. C. 102(e) as being anticipated by U.S. Patent No. 6,152,946 to Broome et al. ("the Broome patent"). The Broome patent is directed to a filtering device mounted on a conventional guide wire for collecting debris floating in a body vessel. The Examiner takes the position that the guide wire disclosed in the Broome patent is considered to have at least one discrete hinge located proximal and distal to the expandable cage assembly. Appellant has repeatedly argued that the Broome patent simply discloses the use of a conventional guide wire and fails to disclose the use of a discrete hinge, or any similar structure, on a guide wire. The Examiner has failed to identify any text or component, location, or area on the drawings of the Broome patent to support his position that a guide wire is considered to have discrete hinges. A copy of the pending claims is attached hereto as Exhibit A. A copy of the drawings is attached hereto as Exhibit B. The Broome patent is attached hereto as Exhibit C.

## ARGUMENT

Claims 1, 2, 5-10, 19-21 and 26-39 were rejected under 35 U.S.C. § 102(e) as being anticipated by the Broome patent. As stated above, Appellant submits that the Broome patent is merely directed to a filtering device mounted on a conventional guide wire and fails to disclose any structure which can be interpreted as a discrete hinge formed on the guide wire. Independent claim 1 recites a structure which includes at least one discrete hinge located proximal to the expandable cage assembly and another hinge located distal to the expandable cage. Independent claim 26 recites a structure having at least one discrete hinge located somewhere on the guide wire to allow the filter device to freely articulate on the guide wire. Appellant submits that the specification and drawings of the Broome patent fails to show any type of structure which could even arguably be considered a discrete hinge made in accordance with Appellant's invention. Most notably, the Examiner has been unable to disclose any structure or text to support his position. The Examiner merely asserts at page 3, paragraph 2 of the final Office Action dated September 22, 2005 (Exhibit D) that "Broome et al shows in figures 1-8, a guide wire is considered of having <sic> at least one discrete hinge proximal to the expandable cage assembly (24) and another hinge located distal to the expandable cage (24) to allow...." However, there is no support for this position in either the specification or drawings of the Broome patent.

The discrete hinge made in accordance with Appellant's currently claimed invention is a specific component or fabricated area formed on a guide wire to provide even more flexibility to the guide wire. It is more than just an unidentified area of a conventional guide wire. Rather, the discrete hinge can be formed, as an example, as a notch cut on the guide wire as shown in FIG. 5A and recited in claim 5, a slot cut into the guide wire as shown in FIGS. 5B & 5C and recited in claim 6, or holes cut into the guide wire as shown in FIG. 5D and recited in claim 8. Other examples of discrete hinges are shown in FIG. 5E. These are just a few of the numerous ways that a discrete hinge can

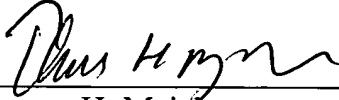
be formed on the guide wire. The Broome patent fails to disclose any structure which constitutes a discrete hinge in accordance with Appellant's currently claimed invention.

Appellant respectfully submits that the Examiner has simply failed to find or identify any support in the Broome patent to support his position that the guide wire in the Broome patent includes a discrete hinge. In order to anticipate a claim, the Examiner has the burden of showing that each and every element in the claim is found, either expressly or inherently, in a single prior art reference. MPEP 2131. Appellant respectfully submits that the Examiner has failed to cite a proper anticipatory reference which shows each and every element recited in the pending claims. As such, the Broome patent fails to constitute a proper anticipatory reference.

In summation, the Broome patent simply fails to disclose the presently claimed invention. It is therefore urged that claims 1, 2, 5-10, 19-21 and 26-39 1-40 are not anticipated by the Broome patent.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:   
Thomas H. Majcher  
Registration No. 31,119

Howard Hughes Center  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045  
Telephone: (310) 824-5555  
Facsimile: (310) 824-9696  
Customer No. 24201

119526.1

U.S. Patent Application No. 10/600,817  
Filed June 20, 2003  
HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE  
Inventors: Benjamin C. Huter; Kevin M. Magrini; John E. Papp  
ACSES-64851 (2791C)

Claims as of 9/22/05 Final Office Action

1. (Previously presented) A filtering device for capturing embolic material released into a body vessel during a therapeutic interventional procedure, comprising:

a guide wire having a proximal end and a distal end and adapted to be inserted within the vasculature of;

an expandable cage assembly having distal and proximal ends, the cage assembly being attached to the distal end of the guide wire and expandable to capture embolic material and collapsible to retain the captured embolic material;

filter material secured to the expandable cage assembly; and

at least one discrete hinge located on the guide wire proximal to the expandable cage assembly and another hinge located distal to the expandable cage assembly to allow the expandable cage assembly to freely articulate on the guide wire.

2. (Original) The filtering device of claim 1, wherein:

the guide wire does not pass through the expandable cage assembly and comprises separate sections, one section attached to and extending from the proximal end of the expandable cage assembly and one section attached to and extending from the distal end of the expandable cage assembly.

3. - 4. (Canceled)

5. (Previously presented) The filtering device of claim 1, wherein:

the at least one hinge comprises notches cut along the longitudinal axis of the guide wire such that an area of decreased guide wire diameter is created.

6. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises slots cut in the guide wire, each slot extending along the longitudinal axis.
7. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises slots cut in the guide wire, each slot extending perpendicular to the longitudinal axis.
8. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises holes cut in the guide wire along the longitudinal axis.
9. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises a spring connecting separate sections of the guide wire.
10. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises a portion of material having a different durometer than the guide wire, the portion of material connecting separate sections of the guide wire.
- 11 - 18. (Canceled)
19. (Original) The filtering device of claim 1, further comprising:  
stop fittings attached to the guide wire at the proximal and distal ends of the expandable cage assembly, the stop fittings preventing the expandable cage assembly from moving proximally or distally along the guide wire.

20. (Previously presented) The filtering device of claim 19, further comprising:

a third stop fitting attached to the guide wire distal to the proximal end of the expandable cage assembly.

21. (Previously presented) The filtering device of claim 20, wherein:  
the three stop fittings are conical-shaped and provide a smooth transition between the expandable cage assembly and guide wire.

22-25. (Canceled)

26. (Previously presented) A filtering device for capturing embolic material released into a body vessel during a therapeutic interventional procedure, comprising:  
a guide wire having a proximal end and a distal end and adapted to be inserted within the vasculature of a patient;

a filter device associated with the guide wire; and  
at least one discrete hinge located on the guide wire to allow the filter device to freely articulate on the guide wire.

27. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge is located distal to the filter device.

28. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge is located proximal to the filter device.

29. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge comprises notches cut along the longitudinal axis of the guide wire such that an area of decreased guide wire diameter is created.



30. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge comprises slots cut in the guide wire, each slot extending  
along the longitudinal axis.

31. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises slots cut in the guide wire, each slot extending  
perpendicular to the longitudinal axis.

32. (Previously presented) The filtering device of claim 1, wherein:  
the at least one hinge comprises holes cut in the guide wire along the longitudinal  
axis.

33. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge comprises a spring connecting separate sections of the guide  
wire.

34. (Previously presented) The filtering device of claim 26, wherein:  
the at least one hinge comprises a portion of material having a different durometer  
than the guide wire, the portion of material connecting separate sections of the guide  
wire.

35. (Previously presented) The filtering device of claim 28, wherein:  
a discrete hinge is located distal to the filter device.

36. (Previously presented) The filtering device of claim 26, wherein:  
the filter device is self-expanding.

Claims as of 9/22/05 Final Office Action  
Serial No. 10/600,817  
Docket No. ACSES-64851 (2791C)

37. (Previously presented) The filtering device of claim 36, wherein:  
the expandable filter includes an expandable cage made from a material having  
self-expanding properties.

38. (Previously presented) The filtering device of claim 36, further including:  
an obturator attached to the filter device which forms a hinge allowing the  
obturator to freely articulate on the guide wire.

39. (Previously presented) The filtering device of claim 36, wherein:  
the discrete hinge is made from a reduced area of mass along the guide wire.

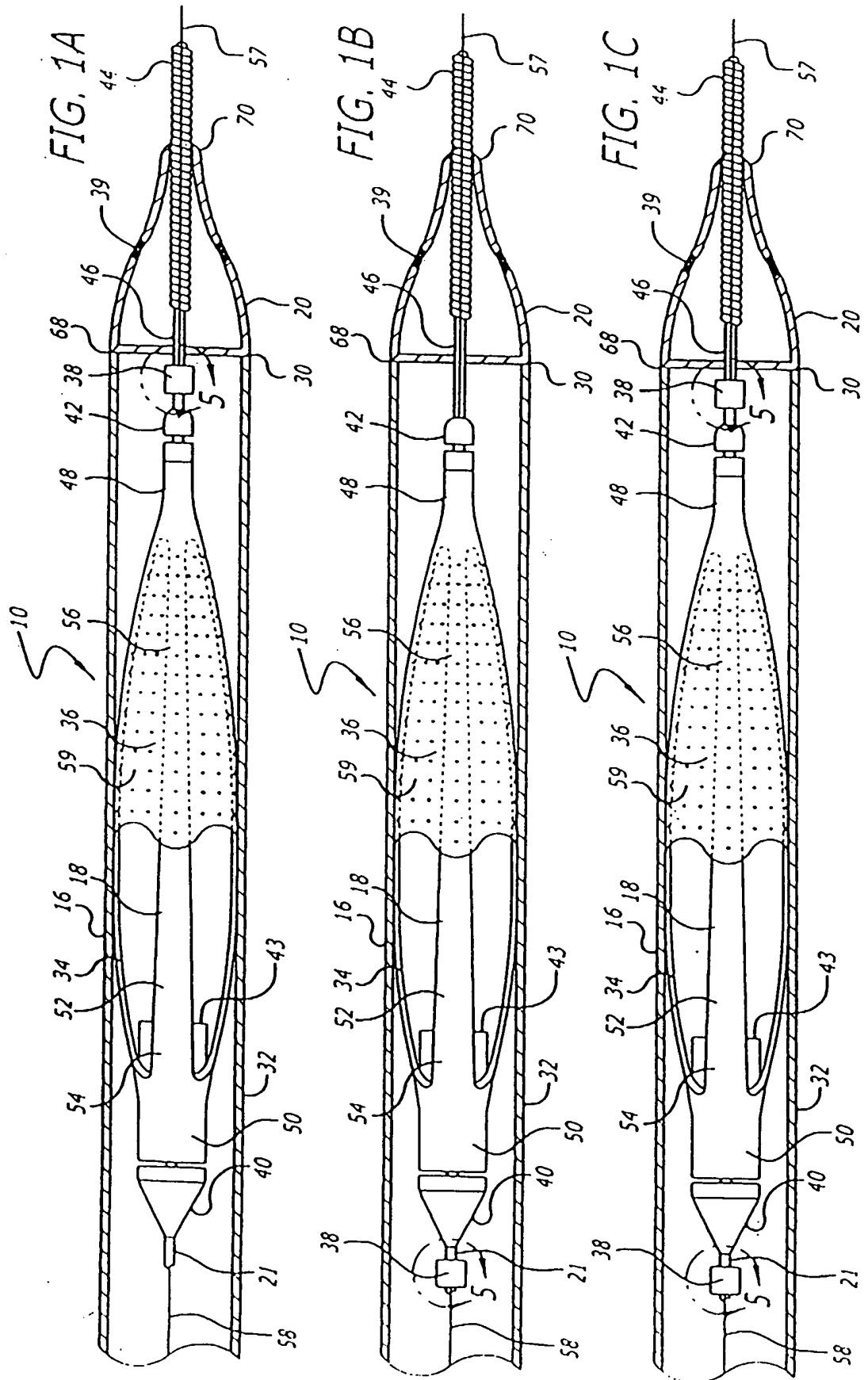
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# TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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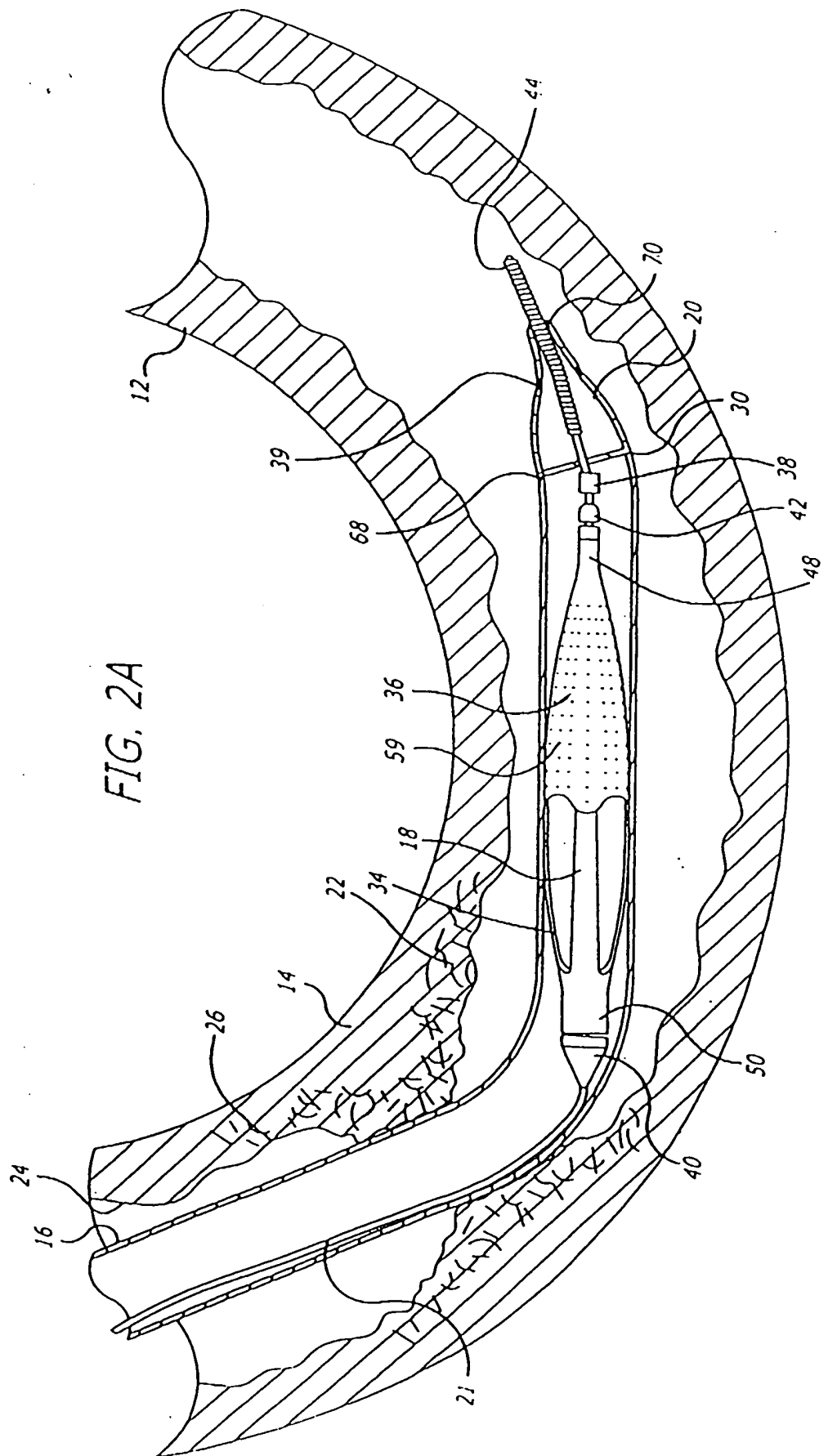


**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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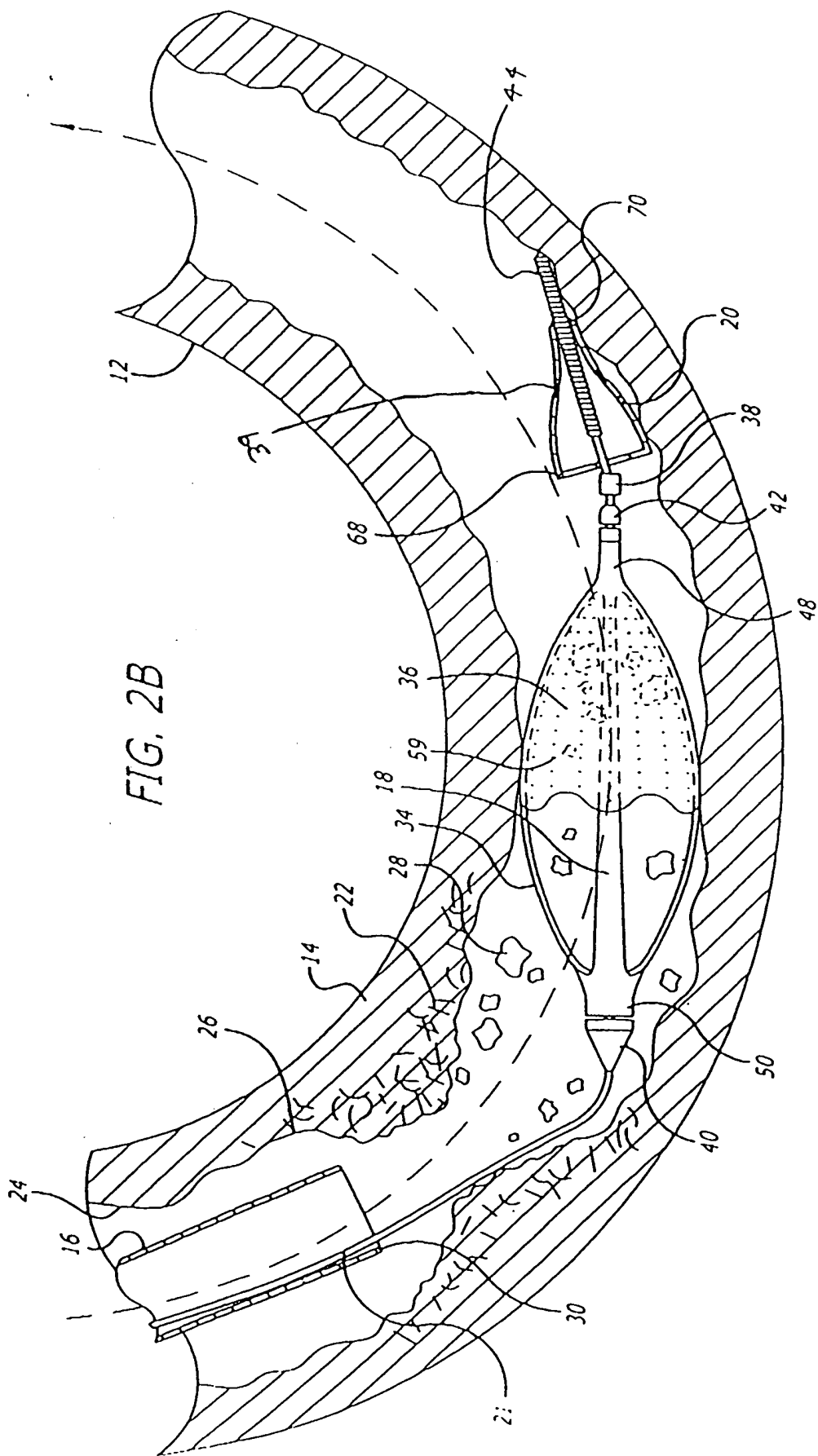


**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

**Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp**

ACS-64851 (2791C)

3/8



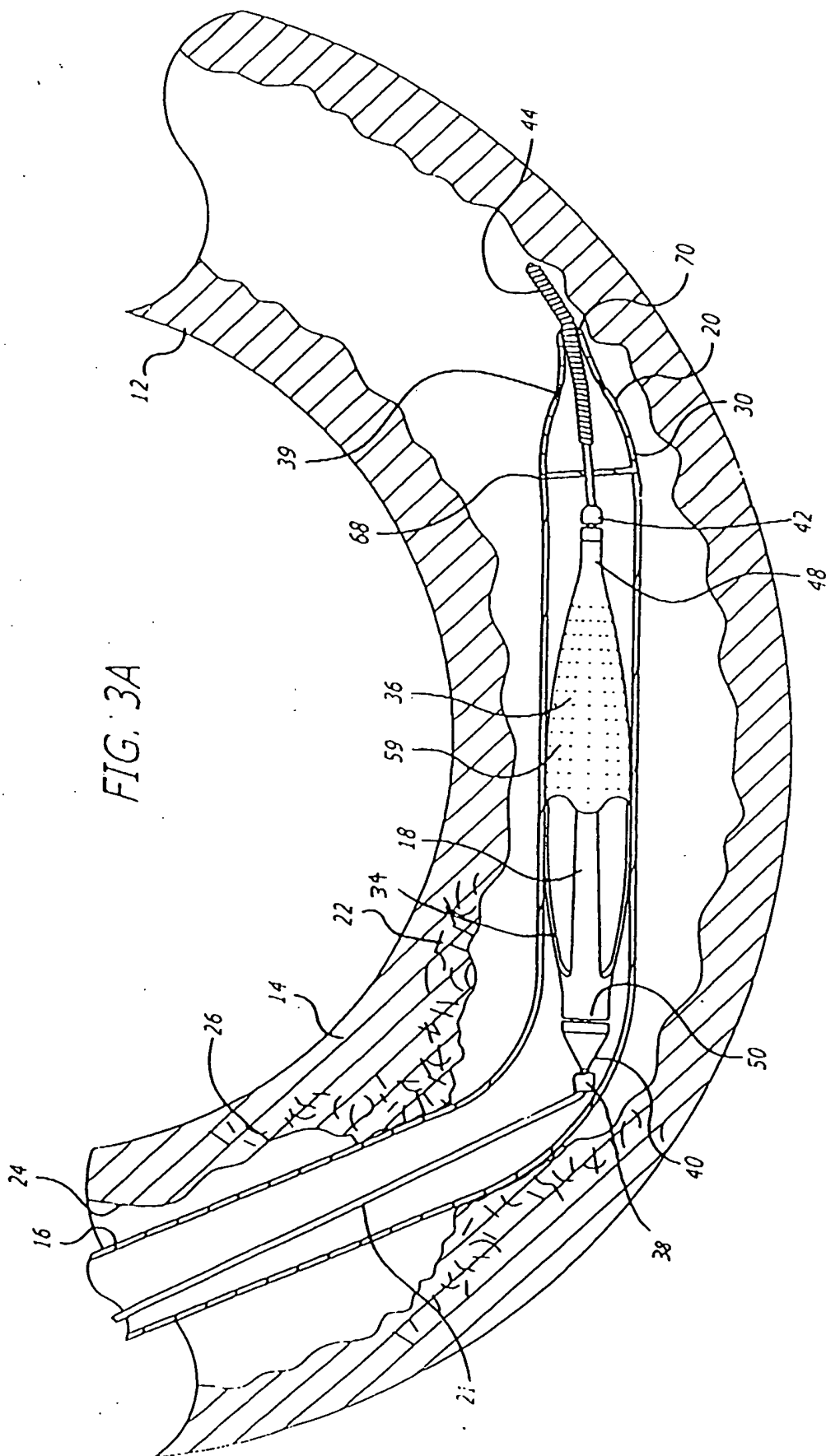
**EXHIBIT B**

**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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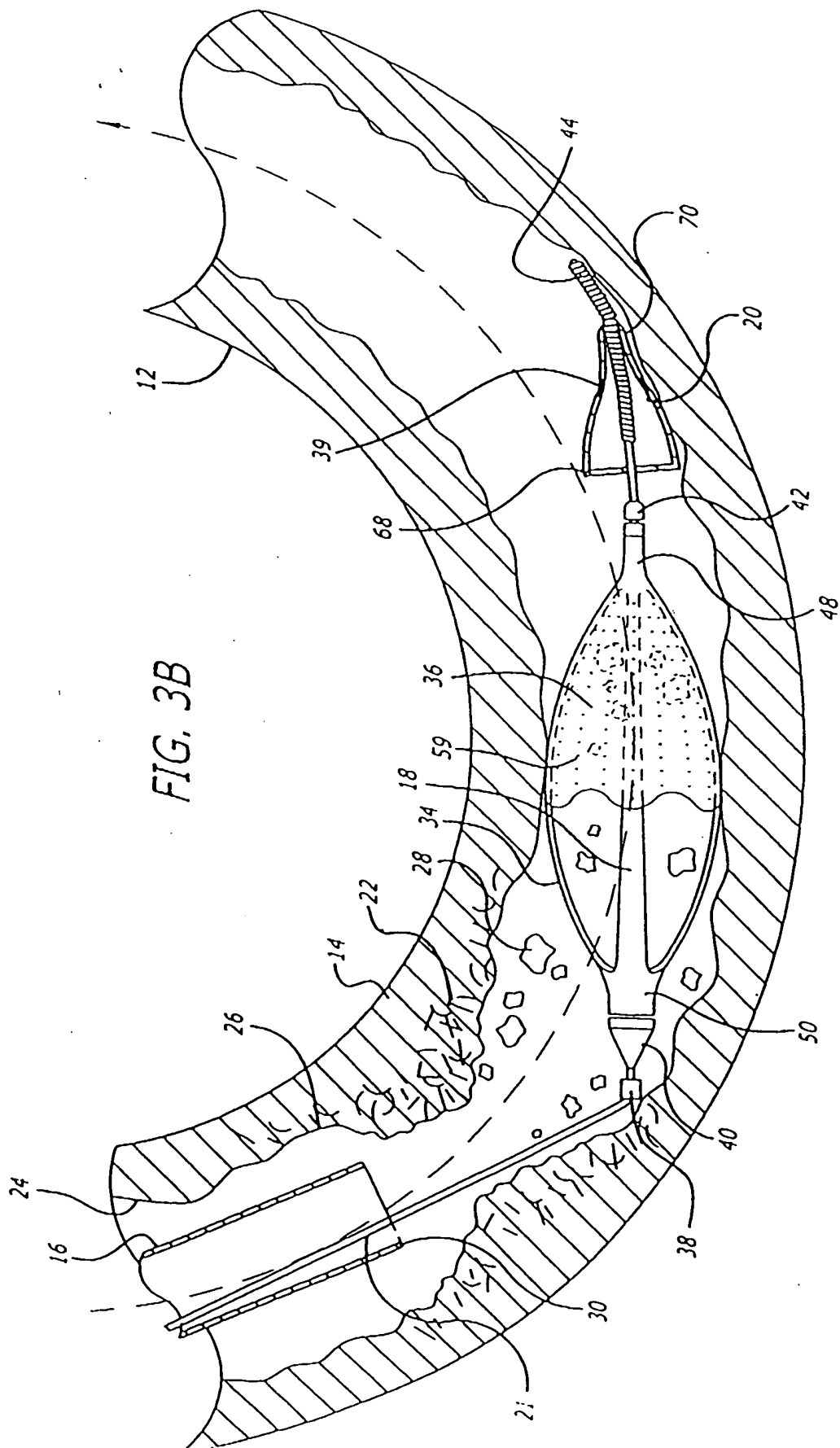


**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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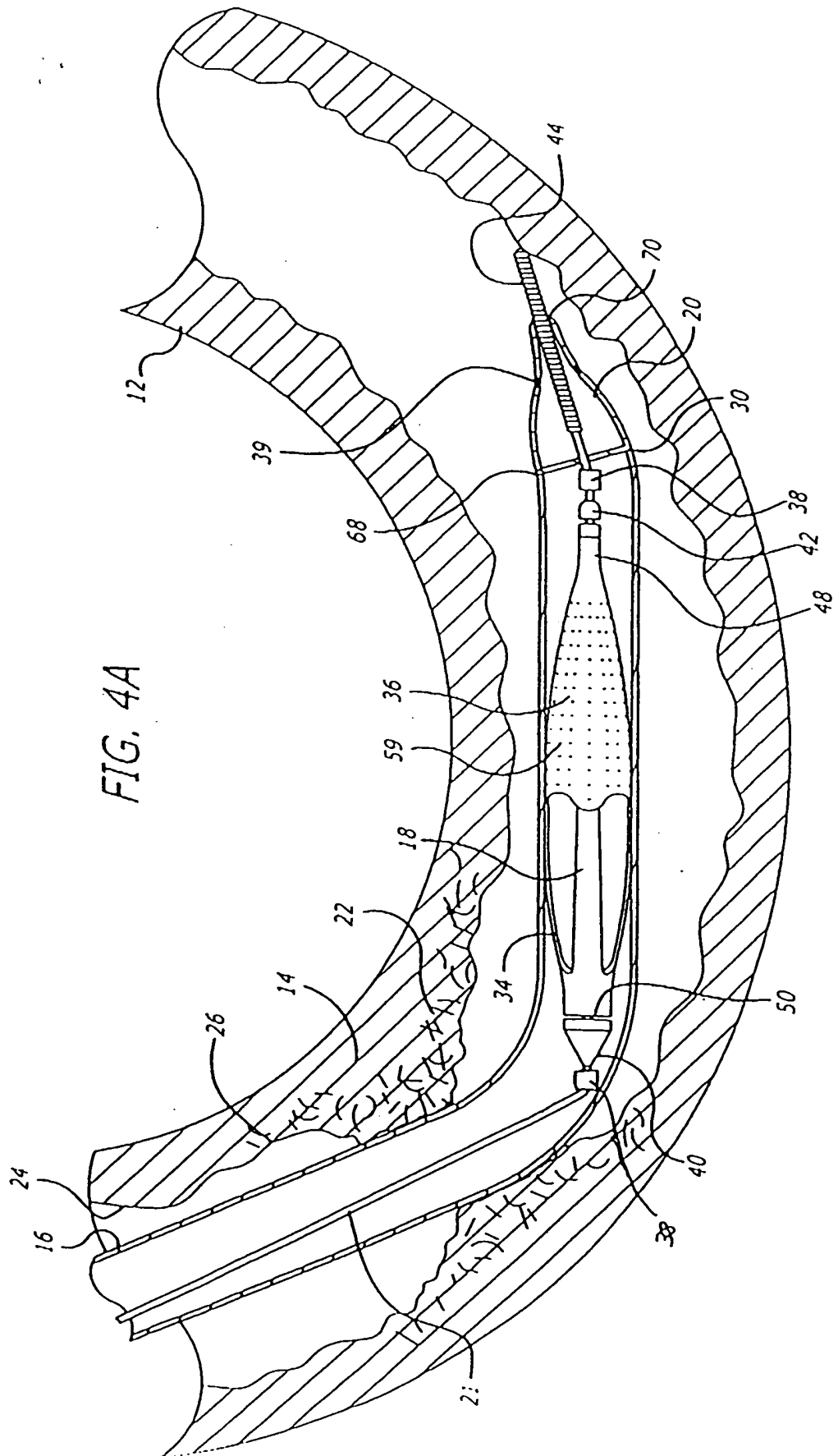
**EXHIBIT B**

**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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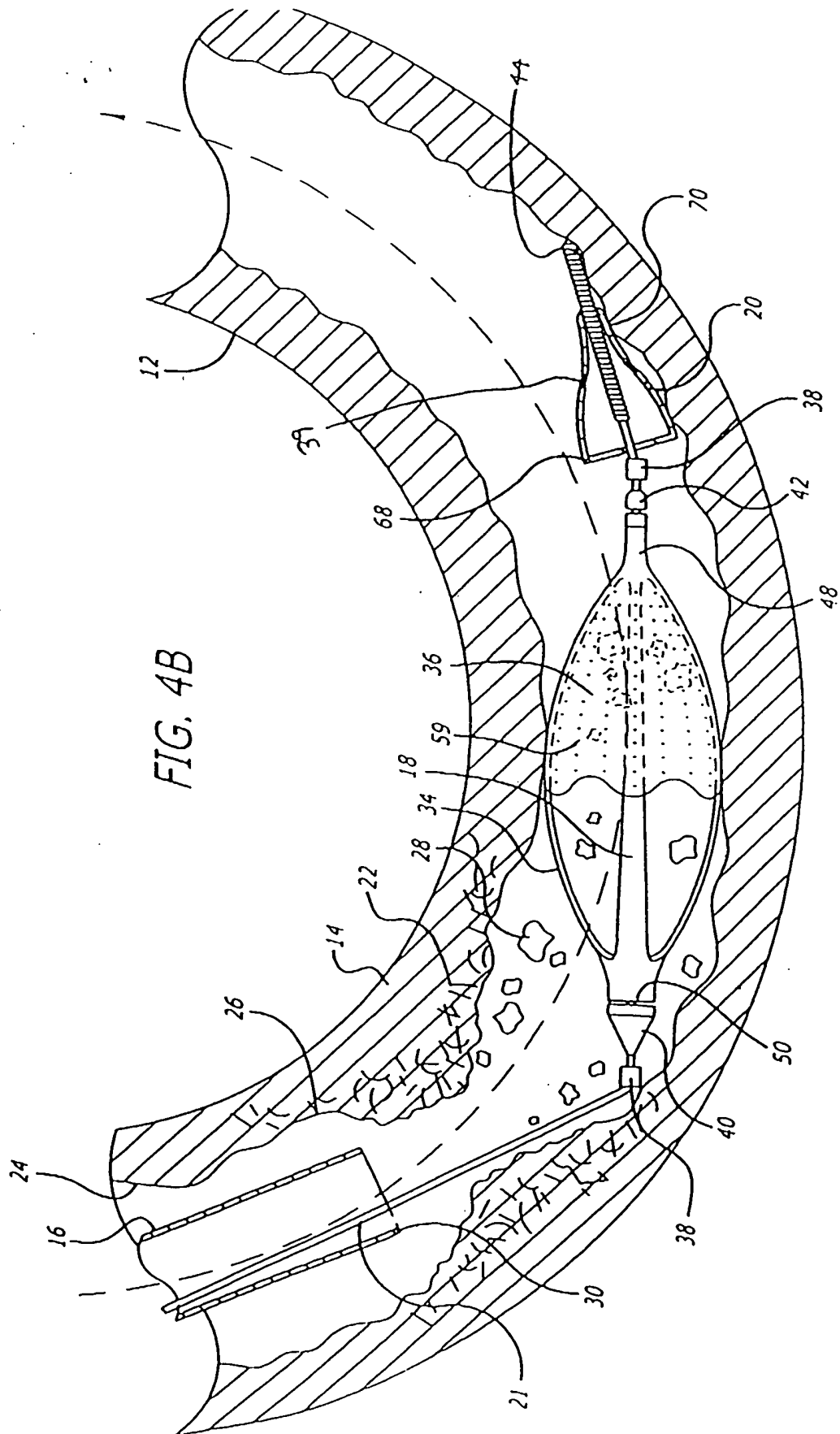


**TITLE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

ACS-64851 (2791C)

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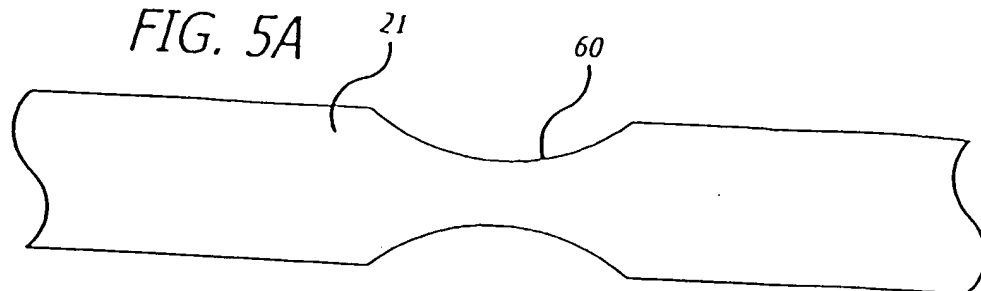
**FILE: HINGED SHORT CAGE FOR AN EMBOLIC PROTECTION DEVICE**

Inventor(s)-Benjamin C. Huter, Kevin M. Magrini, John E. Papp

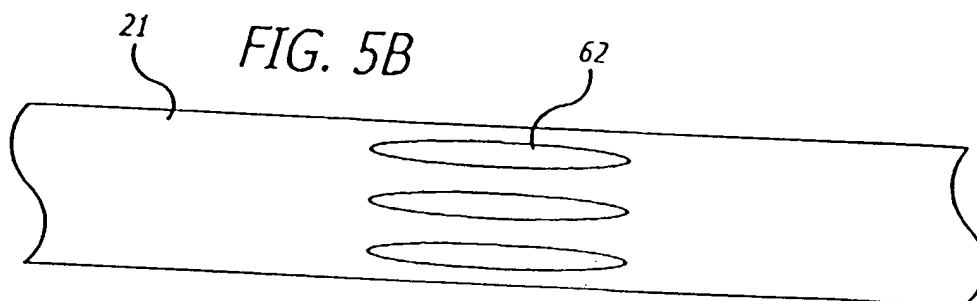
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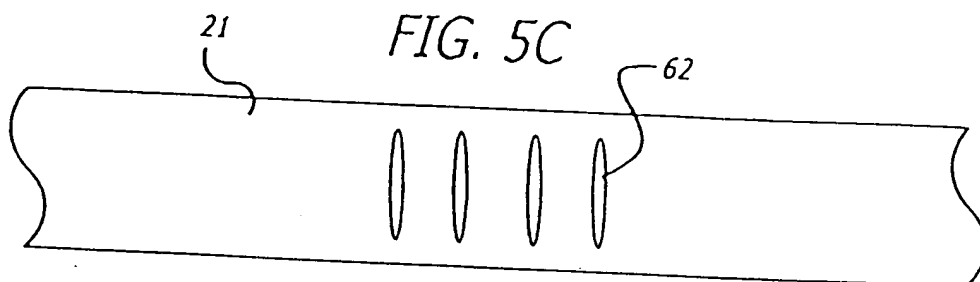
*FIG. 5A*



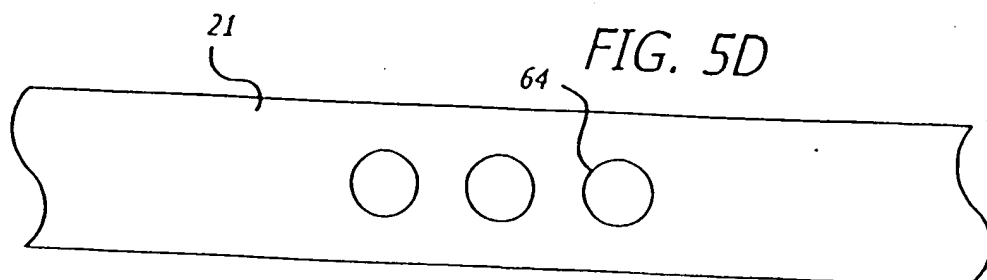
*FIG. 5B*



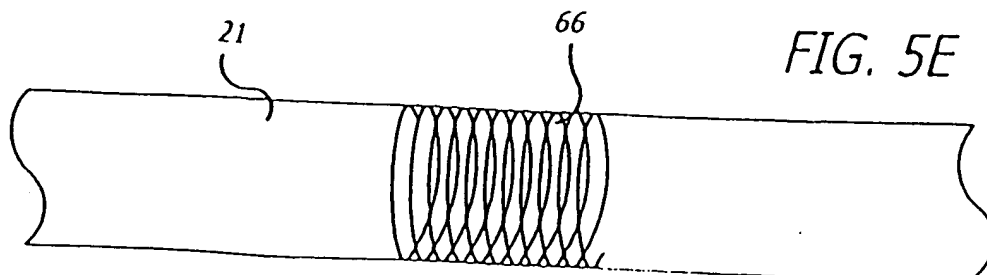
*FIG. 5C*



*FIG. 5D*



*FIG. 5E*





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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/600,817      | 06/20/2003  | Benjamin C. Huter    | ACS-64851 (2791C)   | 9231             |

7590 09/22/2005

FULWIDER PATTON LEE & UTECHT, LLP

Howard Hughes Center

Tenth Floor

6060 Center Drive

Los Angeles, CA 90045

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LOS ANGELES

EXAMINER

TRUONG, KEVIN THAO

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## FINAL REJECTION

2 - MONTH RESPONSE DUE: November 22, 2005  
3 - MONTH RESPONSE DUE: December 22, 2005  
NOTICE OF APPEAL DUE:  
(6-MONTH PERIOD ENDS) March 22, 2006

|                              |                               |                              |  |
|------------------------------|-------------------------------|------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/600,817 | Applicant(s)<br>HUTER ET AL. |  |
|                              | Examiner<br>Kevin T. Truong   | Art Unit<br>3731             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendt. 07/22/05.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 5-10, 19-21 and 26-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-10, 19-21, and 26-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 5-10, 19-21, and 26-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,592,606. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application clearly would have been obvious in view of the relatively subject matter of the patent claims such as a guide wire; an expandable cage assembly being attached to the distal end of the guide wire; filter material secured to the expandable cage assembly; and further at least one discrete hinge located on the guide wire.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

Art Unit: 3731

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1, 2, 5-10, 19-21, and 26-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Broome et al. (U.S. 6,152,946).

Broome et al shows in figures 1-8, a guide wire (32) is considered of having at least one discrete hinge proximal to the expandable cage assembly (24) and another hinge located distal to the expandable cage assembly (24) to allow the expandable cage assembly to freely articulate on the guide wire (32), due to the guide wire (32) flexibility to guide the filter device through the vasculature of a patient; the expandable cage assembly (24) connected to filter material (20), wherein the filter material (20) comprises a plurality of openings (40), wherein the guide wire (32) includes a coiled tip (fig.9) at the distal end; and wherein the expandable cage assembly comprises a plurality of struts (30) thereon.

### ***Response to Arguments***

Applicant's arguments filed 07/22/2005 have been fully considered but they are not persuasive. With respect to claims 1 and 26, the Examiner asserts that Broome patent is considered of having at least one discrete hinge located on the guide wire (32), which can be at any specific location on the guide wire (32) so that it is possible for a guide wire to pass through the vasculature. The Examiner disagrees with Applicant's

Art Unit: 3731

remarks and has maintained the grounds of rejection under 35 U.S.C. 102 (e) as being anticipated by Broome et al for the reasons as set forth in the above rejection.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and (571) 273-8300 for After Final communications.

Art Unit: 3731

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3700.



Kevin T. Truong  
Primary Examiner  
Art Unit 3731

ktt  
September 19, 2005